

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

TEXAS,

Plaintiff,

v.

Case No. 5:13-CV-00255-C

EQUAL EMPLOYMENT OPPOR-
TUNITY COMMISSION; VICTORIA
A. LIPNIC, in her official capacity as
Acting Chair of the Equal Employ-
ment Opportunity Commission; and
JEFFERSON B. SESSIONS, III, in
his official capacity as Attorney Gen-
eral of the United States,

Defendants.

TEXAS’S MOTION FOR SUMMARY JUDGMENT

Plaintiff Texas, by and through the Attorney General of Texas, and pursuant to Rule 56 of the Federal Rules of Civil Procedure and LR 56.1–56.7, respectfully moves for summary judgment on the following claims within its Second Amended Complaint for Declaratory and Injunctive Relief (ECF No. 62), to wit:

SUMMARY

COUNT I – That Texas’s no-felons hiring policies do not constitute unlawful employment practices under the Equal Employment Opportunity Commission’s (EEOC) Felon Hiring Rule (“Rule”); that the Rule impermissibly preempts Texas law and forces Texas agencies and officials to choose between evaluating and hiring convicted felons in defiance of Texas law or risking investigations, challenges, and lawsuits from EEOC and Defendant Sessions; and, that because the imposition of the Rule violates many principles of law, there is no genuine issue as to any material fact that prevents the Court from declaring Texas’s policies lawful and permanently enjoining Defendants from enforcing the Rule against Texas agencies and officials.

COUNT II – That the Rule constitutes unlawful agency action under 5 U.S.C. § 706(a)(C), because EEOC exceeded its statutory authority under Title VII; that even if Congress had given EEOC rulemaking authority, it would be required to comply with the notice-and-comment procedures of 5 U.S.C. § 553, EEOC did not comply with those procedures, and the Rule should be set aside on those grounds as well; and that the Rule is invalid on its face because it is contrary to Title VII and is an unreasonable interpretation of Title VII.

The elements of each claim or defense as to which summary judgment is sought will be more fully articulated in Plaintiff's Brief in Support of Motion for Summary Judgment, which will be filed in accordance with LR 56.5, and comply with the requirements of LR 7.2. In accordance with LR 56.6, Plaintiff will also file an Appendix.

REQUESTED RELIEF

Plaintiff respectfully asks the Court to enter an order granting this Motion for Summary Judgment, and requests the following relief against Defendants, their agents, servants, employees, attorneys, and all persons and entities in active concert or participation with them, directly or indirectly:

1. A declaratory judgment that Texas and its constituent agencies and officials are entitled to maintain and enforce laws and policies that absolutely bar convicted felons, or a certain category of convicted felons, from government employment, and that Texas need not conduct the "individualize assessments" that EEOC purports to require;
2. A declaratory judgment holding unlawful and setting aside EEOC's Felon-Hiring Rule;
3. A declaratory judgment that Defendant Sessions and the United States Department of Justice may not sue Texas or any of its constituent agencies or officials based on the interpretation of Title VII that appears in the Rule; and

4. A permanent injunction prohibiting Defendant Sessions and the United States Department of Justice may not sue Texas or any of its constituent agencies or officials based on the interpretation of Title VII that appears in the Rule.

Respectfully submitted this the 14th day of September, 2017.

KEN PAXTON

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on the 14th day of September, 2017, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/Austin R. Nimocks

AUSTIN R. NIMOCKS

Associate Deputy Attorney General